

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES A. DENNIS

CIVIL ACTION

V.

:
:
:

JOHN E. WETZEL, *et al.*

NO. 11-1660

ORDER

AND NOW, this day of , 2016, Respondents'

Motion for Return of the State Court Record is GRANTED.

BY THE COURT:

The Honorable Anita B. Brody
United States District Judge

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MOTION FOR RETURN OF THE STATE COURT RECORD

R. SETH WILLIAMS, District Attorney of Philadelphia County, by his assistants, SUSAN E. AFFRONTI, Chief, Federal Litigation, and RYAN DUNLAVEY, Assistant District Attorney, on behalf of Respondents, respectfully requests that the Court immediately return the state court record to the Court of Common Pleas of Philadelphia County, and in support thereof, states:

James Dennis is incarcerated at a state prison in Pennsylvania for the 1991 murder of Chedell Williams. On August 21, 2013, this Court granted Dennis a conditional writ of habeas corpus, and ordered that he be released from custody or that he be retried by the Commonwealth of Pennsylvania. A panel of the Court of Appeals unanimously reversed, but a divided Court of Appeals, sitting *en banc*, affirmed this Court's decision on August 23, 2016. The Court of Appeals later denied respondents' motion for a stay of the mandate, and issued its mandate on September 30, 2016.

Per the Court of Appeals' order, the Commonwealth is required to release or retry Mr. Dennis within 90 days. The timeline imposed by the Court of Appeals is unusually short, particularly given the extraordinary amount of time that has passed since the murder.

As a matter of law, a retrial in state court cannot commence in the Philadelphia County Court of Common Pleas until the official record is remanded from the federal courts. *See* Pa. R. App. P. 1701(a) (prohibiting further action by the trial court after an

appeal is taken, absent certain exceptions), 2591(a) (requiring “remand of the record” before trial court can proceed in accord with appellate court judgment). It is thus critical that the Court return the state court record to the Court of Common Pleas as soon as possible.

Return of the record is also essential for the parties’ trial preparations. Almost all of the relevant trial evidence remains within the custody of this Court. Original crime scene photographs, original witness statements, and a pink card belonging to a witness this Court considered crucial to the defense, are all within the Court’s possession. Without these records, the state court cannot move the matter toward retrial and the parties’ ability to prepare for retrial will be impaired.

WHEREFORE, Respondents respectfully request that the Court *immediately* return the state court record to the Clerk of Courts, Justice Juanita Kidd Stout Criminal Justice Center, 1301 Filbert Street, Philadelphia, PA 19107.

Respectfully submitted,

/s/ Ryan Dunlavey
RYAN DUNLAVEY
Assistant District Attorney

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CERTIFICATE OF SERVICE

I, RYAN DUNLAVEY, hereby certify that on October 12, 2016, a copy of the foregoing pleading was served through the Court's electronic filing system, upon counsel for Mr. Dennis.

/s/ Ryan Dunlavey
RYAN DUNLAVEY
Assistant District Attorney
Three South Penn Square
Philadelphia, PA 19107
(215) 686-5742